SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
MAR 22 1965
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

Term, 1965
No. 179

STANLEY M. CORBETT, GUARDIAN OF THE PROPERTY OF CONSTANTINE NEONAKIS, A MINOR,

Appellant,

vs.

VIOLA STERGIOS, a/k/a VIOLA STERYIAKIS,

Appellee.

Appeal from the Supreme Court of the State of Iowa

APPELLEE'S BRIEF

HARRY H. SMITH,
235 Badgerow Building
Sioux City, Iowa
Of Counsel.

PHILLIP S. DANOS,
208 Insurance Exchange Building
Sioux City, Iowa

H. A. MCQUEEN,
208 Insurance Exchange Building
Sioux City, Iowa
Counsel for Appellee.

March, 1965

Cockle Printing Company—Law Briefs—Omaha, Nebr.

INDEX

Page

Opinion Below 1

Jurisdiction 2

Questions Presented 2

Statement of the Case 2

Argument 3

I. The Treaty between the United States and Greece does not nullify the requirement of Iowa Law that the Appellant must prove the existence of reciprocal rights of succession or testamentary disposition before he may acquire property rights in Iowa. 3

II. Rights to property inherited in Iowa are determined by the laws of Iowa. 8

Conclusion 11

Appendix

Appendix A:

Treaty of Friendship, Commerce and Navigation between the United States of America and the Kingdom of Greece, August 3, 1951 (1954), 2 U. S. T. & O. I. A. 1829, T. I. A. S. No. 3057 13

Appendix B:

Section 567.1, Code of Iowa, 1962 16

Section 567.8, Code of Iowa, 1962 16

CITATIONS

Pages

CASES:

Clark v. Allen, 331 U. S. 503 (1947) ____ 8

Cook v. Estate of Todd, 249 Iowa 1277, 90 N. W. 2d 23 (1958) ____ 10

In re Gillies' Estate, N. J., 83 A. 2d 889 (1951) ____ 10

TREATIES:

Treaty of Friendship, Commerce and Navigation between the United States of America and the Kingdom of Greece, August 3, 1951 (1954), 2 U. S. T. & O. I. A. 1829, T. I. A. S. No. 3057 ____ 2, 3, 4, 5, 6, 7, 8, 9

STATUTES:

Code of Iowa, 1962

Section 567.1 ____ 4

Section 567.8 ____ 2, 4

Section 600.6 ____ 3, 9

In the
Supreme Court of the United States

_____ Term, 1965
No. 179

STANLEY M. CORBETT, GUARDIAN OF THE PROPERTY OF CONSTANTINE NEONAKIS, A MINOR,

Appellant,

vs.

VIOLA STERGIOS, a/k/a VIOLA STERYIAKIS,

Appellee.

Appeal from the Supreme Court of the State of Iowa

APPELLEE'S BRIEF

OPINION BELOW

The Opinion and Judgment of the Supreme Court of Iowa affirming the decision of the Trial Court dismissing Appellant's Petition appears as *Corbett v. Stergios*, ___ Iowa ___, 126 N. W. 2d 342 (1964) (R. 42-55).

JURISDICTION

The Opinion and Judgment of the Court below, (R. 42-55) was entered on February 11, 1964. Notice of Appeal to the Supreme Court of the United States was filed on April 23, 1964 (R. 56-57). On January 18, 1965, the Supreme Court of the United States entered an Order noting probable jurisdiction and placing this case on the summary calendar (R. 58).

QUESTION PRESENTED

Whether the Treaty of Friendship and Commerce between the United States and Greece nullifies the requirement of Section 567.8, Code of Iowa, 1958, that appellant non-resident Greek alien must prove the existence of reciprocal rights of succession before he may acquire an interest in Iowa real estate by intestate succession from his adopting father.

STATEMENT OF THE CASE

Appellant's brief adequately states the case herein involved with the following additions. The trial court in its determination concluded that the judgment of the Greek Court in adopting the child is conclusive on this Court; no fraud having been shown in its procurement. The trial court further found that the Plaintiff had not carried the burden imposed by Section 567.8 of the Iowa Code which places the burden in each instance upon the non-resident alien to establish the fact of existence of the

reciprocal rights referred to in the statute (R. 35-38). The Iowa Supreme Court affirmed this ruling of the trial court.

The trial court found under Greek law that the adopting parent did not have inheritance rights over the adopting child. The Iowa Supreme Court ruled that the decision of the trial court was also based upon the fact that the adoptive parent under Greek civil law does not have any inheritance rights over the adoptive child and is contrary to the status of the adoptive parent in Iowa under Section 600.6, Code of Iowa.

ARGUMENT

I.

The treaty between the United States and Greece does not nullify the requirement of Iowa law that the appellant must prove the existence of reciprocal rights of succession or testamentary disposition before he may acquire property rights in Iowa.

Section I of Article IX of the treaty provides for "national treatment" in "acquiring by purchase or otherwise, and with respect to owning, leasing, occupying and using" real property, subject to certain limitations. The pertinent portions of the treaty are set out in Appendix A, Infra.

It is admitted by the appellant and the United States that this section includes the acquisition of real property by inheritance. Sub-sections (a) and (b) permit specific

rights of acquisition of real property by the respective foreign national. The words of Sub-section (a) provide specifically that the acquisition by purchase or otherwise by a Greek national shall be dependent upon applicable laws of the States. It is the acquisition of the real property that is dependent upon state law, not the mere holding.

This interpretation of the word "acquire" in Sub-section (a) is further supported by the use of the word in Sub-section (b). Under Sub-section (b) restrictions which Greece may place are spelled out as restrictions on the right to acquire real property by purchase or otherwise, and restrictions which may be placed on the right to lease, occupy and use such property in specific frontier and coastal areas. It is obvious from this that the restrictions which may be imposed are much broader than those limited to the *holding* of the real property. Reading Sub-sections (a) and (b) together, it is obvious that the two sub-sections are similar, and that it could not be intended to allow Greece greater authority to restrict the acquisition of real property than would be granted the States of the United States.

The effect of Section (1) is to permit nationals of the United States and Greece to acquire real property subject to certain state laws in the United States and certain restrictions imposed by the laws of Greece. The limitations imposed by Iowa law includes 567.1 and 567.8. The full text of these statutes are set out in Appendix B. Section 567.1 limits the holding of real estate by inheritance by non-resident aliens to a period of twenty years. Section 567.8 limits the acquisition of such property to

non-resident aliens of foreign countries granting to reciprocal rights of inheritance to United States citizens.

The appellant confuses the right to acquire real property under Section (1) of the treaty in the ways specified with its disposal under Section (2) when the same is inherited.

Section (1) provides that a Greek national can purchase real estate the same as any citizen of Iowa subject to the laws of Iowa. The Greek national can also acquire real estate by inheritance, but again subject to the laws of Iowa as to the right to inherit. This right of inheritance is based on the condition of reciprocity of rights as to inheritance between the United States and Greece. Appellant concedes that should he, as a Greek national, wish to acquire a fee simple interest by inheritance, he would have to prove that the Greek law grants reciprocity. (Appellant's brief, page 10). The United States Government, in their brief introduces evidence that on March 20, 1945, there existed reciprocal rights of inheritance between the United States and Greece and the State Department is fully satisfied that reciprocal rights of inheritance exist under the laws of Greece. Appellee wishes to draw to the attention of this Court that Abram Chayes, the then legal advisor of the State Department, did not testify before the trial court in this matter. (Memorandum of the United States Government, Appendix A).

Section (2) grants the right to the alien to *hold* real property acquired by inheritance for at least 5 years regardless of any state law to the contrary. Section (2) is not applicable in this case as the Iowa statute provides a period of at least 20 years.

It could not be more apparent to the interpretation of this treaty that its drafters in 1951 recognized that under Section (1), the state laws of inheritance in Iowa did require reciprocal inheritance rights between nationals. Section (1) specifically states that the rights accorded the nationals within the territories of the other party in regard to real estate acquired by purchase or inheritance was subject to limitations in Sub-sections (a) and (b). If the same be dependent upon the applicable laws of the state and that law limits the foreign national, then it is recognized under this treaty. If laws imposing such limitations are abrogated by the treaty, then there are in fact no limitations which are evident under Sub-sections (a) and (b) and the supposed limitations are meaningless.

Article XXIV defines "national treatment". In essence, it means equal treatment in one country for the nationals of the other country. In the United States, Greek nationals are treated like United States citizens. In Greece, United States nationals are treated as are Greek citizens.

Section (1) of Article IX provides for national treatment in the United States of Greek citizens and for national treatment in Greece of United States citizens. This treatment which applies to the *acquisition* of real property is by the Treaty subject to the limitations of Subsections (a) and (b), the laws of the states and of Greece. These laws include "reciprocal statutes" which at the time the Treaty was enacted were in effect in several states, and which specifically apply to the acquisition of real property by the foreign national (non-resident alien). In addition, many states had laws limiting the period for

holding real property once it was acquired by inheritance. Our State Department in negotiating the treaty took into consideration these state laws and did intend to make clear that the limitations of these laws applied to acquisition of real property by the Greek national.

Section (2) of Article IX, refers to the disposal of property acquired by inheritance. This property has already been acquired by inheritance, but because of the limitations of this section, it may be held only for a limited period in some states. Section (2) provides for a minimum period of 5 years for disposing of real property already acquired. If nothing has been acquired, there is nothing to dispose.

The Treaty by its preamble emphasizes that it is based in general upon the principles of national and of unconditional most-favored-nation treatment reciprocally recorded. The Treaty recognizes the importance of reciprocity, and to allow recognition of rights where there is no reciprocity would be to negate the purpose of the Treaty.

The treaty sets out to accord to each of the parties certain specified rights with definite limitations. Article IX does not apply the most-favored nation treatment as this article is definite and restrictive and specifically sets out the limitations.

National treatment is provided in Article IX, but with limitations. The limitations include those which may be imposed by local law of the respective countries. The limitations are set out in Sub-sections (a) and (b). In effect the Treaty recognizes there may be instances where

treatment of an alien under local law may be different from treatment of a citizen. If this be the case, there is an exception to treatment reciprocally accorded. In this instance, local statutes on reciprocity apply. If in fact reciprocity is shown, the alien inherits and acquires the real property, subject to local laws of disposition and Article IX, Section (2) of the Treaty. If it is not shown, he cannot inherit.

By the Treaty, Greece may impose restrictions upon the acquisition of real property. Since Greece can impose restrictions, limiting reciprocity under Article IX, the burden is upon the alien to show there are reciprocal rights before he can receive national treatment in the acquisition of real property. Once shown, the spirit of the Treaty is fulfilled.

II.

Rights to property inherited in Iowa are determined by the laws of Iowa.

In the United States inheritance rights are granted under state law, but the rights may be affected by overriding federal policy, as where a treaty makes a different arrangement. *Clark v. Allen*, 331, U. S. 503 (1947). The Treaty under consideration does not grant rights of inheritance, but in fact recognizes the state laws of inheritance and subject thereto.

The citizen of Iowa can inherit property in Iowa only if he is granted this right by the Iowa law. A Nebraska citizen or any other state citizen would be subject to the Iowa law of inheritance. Also a foreign national residing

in a foreign country. All must establish the right to inherit under Iowa law before such property can be acquired.

The appellant claims his right to inherit herein under Section 600.6, Code of Iowa. This section of the Code provides:

> "Upon the entering of such decree, the rights, duties, and relationship between the child and parent by adoption shall be the same that exist between parents and child by lawful birth and the right of inheritance from each other shall be the same as between parent and child born in lawful wedlock."

The rights of the adopted child are those determined by Iowa law. If the Iowa law grants the right to inherit, the child may inherit. Otherwise, it may not.

It is submitted that implicit in the Iowa court's decision is the recognition that rights following from the adoption shall not be recognized if the law under which the adoption is granted differ with laws and policies of this state. In the opinion of the Supreme Court of Iowa, it is stated as follows (R. 52).

> "VIII. The decision of the trial court was also based upon the fact that there is a lack of reciprocity as follows: In Iowa there appears in Section 600.6, Code of Iowa, the following provision: 'Status of the adopted child. Upon the entering of such decree, the rights, duties and relationships between the child and parent by adoption shall be the same that exists between parents and child by lawful birth and the right of inheritance from each other shall be the same as between parent and children born in lawful wedlock.'
>
> "A duly verified copy of the Greek civil law pertaining to adoption was offered in evidence. A portion of Article 1643 of Chapter 13, pertaining to adoption

provides as follows: 'The adoptive parent does not have any inheritance rights over the adopted child.'

"This is not reciprocity as between the citizens and nationals of the two countries. The provisions are contrary to each other."

Herein it is implied that inheritance laws which place an adopted child in a different relationship with his adopted parent from those established in Iowa are repugnant to our laws and policies and shall not be recognized. Previously the Iowa Supreme Court has stated principle more fully in *Cook v. The Estate of Todd*, 249 Iowa 1277, 90 N. W. 2d 23 (1958) as follows:

"It is generally held that the status of adoption created by the law of a state having jurisdiction to create it will be recognized by the courts of another state to such extent at least as is not inconsistent with the laws or policies of the latter state."

It is submitted that this principle is followed in other states of the Union. This important principle is enunciated most effectively *In Re Gillies' Estate*, 83 A. 2d 899 (1951), wherein the court states as follows:

"The weight of authority in this country is that a child adopted in a foreign state or country may take under local statutes of descent and distribution, if such foreign state or country had jurisdiction to fix his status with respect to his adoptive parents, but this rule of international comity is subject to the condition that the law, with regard to adoption, of the state in which the real and personal property is situated, does not differ essentially from the laws of the state in which the adoption was had, so that local public policy is not violated by recognizing and giving effect to the adoption proceedings of the foreign state or country. * * * *"

It is important that in determining the effect of an adoption under a law other than the local law, two things must be determined: First, whether the adoption is effective under the foreign law so as to be given recognition under the local law; and second, the rights to be granted under local law be so recognized. In this case the Iowa Court recognized that there had been a valid adoption under the laws of Greece (R. 35, 36). However, the rights to be granted by such recognition are determined by Iowa law. In cases involving rights of inheritance, an adopted child cannot inherit in Iowa if the adoptive parent cannot. The Iowa Supreme Court herein makes this the Iowa law.

This determination is one separate and apart from the question of alienage, since the adopted child is not denied any rights because of its alienage. It is denied inheritance rights because the laws creating the status are different from those of Iowa, and the public policy behind our inheritance laws is not to give effect for purposes of inheritance to such a status. For an adopted child to inherit in Iowa, it would be necessary for the child to be adopted under laws not inconsistent with the policy of our laws.

CONCLUSION

The judgment of the Supreme Court of the State of Iowa affirming the Judgment and Decree of the District Court of Iowa in and for Woodbury County should be affirmed:

(1) Interpretation placed on treaty is a proper one.

(2) Under Iowa law the inheritance rights acquired by the adoption in Greece did not include the right to inherit from the adoptive parent.

Respectfully submitted,

HARRY H. SMITH

235 Badgerow Building
Sioux City, Iowa

Of Counsel.

PHILLIP S. DANDOS

208 Insurance Exchange Bldg.
Sioux City, Iowa

H. A. MCQUEEN

208 Insurance Exchange Bldg.
Sioux City, Iowa

Counsel for Appellee.

March, 1965

APPENDIX A

Treaty of Friendship, Commerce and Navigation between the United States of America and the Kingdom of Greece.

The United States of America and the Kingdom of Greece, desirous of strengthening the bonds of peace and friendship traditionally existing between them and of promoting their economic development and the general welfare of their peoples, and being cognizant of the contributions which may be made toward these ends by arrangements which facilitate and encourage, on bases mutually advantageous, the flow of investment capital and of technology and the further development of productive enterprise and commercial intercourse, have resolved to conclude a Treaty of Friendship, Commerce and Navigation, based in general upon the principles of national and of unconditional most-favored-nation treatment reciprocally accorded, and for that purpose have appointed as their Plenipotentiaries,

The President of the United States of America:

The Honorable John E. Peurifoy, Ambassador Extraordinary and Plenipotentiary of the United States of America to Greece,

and

His Majesty the King of the Helfenes:

His Excellency Sophocles Venizelos, Prime Minister and Minister of Foreign Affairs,

who having communicated to each other their full powers found in good and due form, have agreed upon the following articles:

Article VIII.

Neither Party shall take unreasonable or discriminatory measures that would impair the legally acquired rights or interests within its territories of nationals and companies of the other Party in the enterprises which they have established or in the capital, skills, art or technology which they have supplied; nor shall either Party unreasonably impede nationals and companies of the other Party from obtaining on equitable terms the capital, skills, arts and technology needed for economic development.

Article IX.

1. Nationals and companies of either Party shall be accorded, within the territories of the other Party, national treatment with respect to acquiring by purchase or otherwise and with respect to owning, leasing, occupying and using land, buildings and other immovable property appropriate to the conduct of commercial, manufacturing, processing, financial, construction, publishing, scientific, educational, philanthropic and professional activities, and for residential and mortuary purposes, subject to the following limitations:

(a) in the case of nationals and companies of Greece the acquisition by purchase, or otherwise, of ownership rights in land, buildings, and other immovable property, within the territories of the United States, shall be dependent upon the applicable laws of the States, Territories and possessions of the United States of America within which such property is located; and

(b) in the case of nationals and companies of the United States of America the right to acquire by

purchase, or otherwise, and the right to lease, occupy and use land, buildings, and other immovable property, within the territories of Greece, shall be subject to restrictions which Greece may consider it necessary to impose on the right of aliens to acquire by purchase, or otherwise, and to lease, occupy and use such property in specific frontier and coastal areas.

2. Nationals and companies of either Party shall be permitted freely to dispose of property within the territories of the other Party with respect to the acquisition of which through testate or intestate succession their alienage has prevented them from receiving national treatment, and they shall be permitted a term of at least five years in which to effect such disposition.

3. Nationals and companies of either Party shall be accorded within the territories of the other Party national treatment with respect to disposing of property of all kinds.

Article XXIV.

1. The term "national treatment" means treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of such Party. The term does not imply immunity from the laws and regulations of a Party which apply in a non-discriminatory manner to nationals, companies, products, vessels, or other objects, as the case may be, of both Parties.

2. The term "most-favored-nation treatment" means treatment accorded within the territories of a Party upon

terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of any third country.

APPENDIX B

Section 567.1, Code of Iowa, 1962.

Section 567.8, Code of Iowa, 1962.

"567.1 ACQUISITION OF REAL ESTATE. Nonresident aliens, or corporations incorporated under the laws of any foreign country, or corporations organized in this country one-half of the stock of which is owned or controlled by nonresident aliens, are prohibited from acquiring title to or holding any real estate in this state, except as hereinafter provided.

"The widow and heirs and devisees, being nonresident aliens, of any alien or naturalized citizen who has acquired real estate in this state, may hold the same by devise, descent, or distribution, for a period of twenty years; and if at the end of that time such real estate has not been sold to a bona fide purchaser for value, or such alien heirs have not become residents of this state, such land shall escheat to the state.

"Nothing in this section contained shall prevent aliens from having or acquiring property of any kind within the corporate limits of any city or town in the state, or lands not to exceed three hundred and twenty acres in the name of one person, or any stock in any corporation for pecuniary profit, or from alienating or devising the same.

"This chapter shall not affect the distribution of personal property, and shall apply to real estate here-

tofore devised or descended when no proceedings for forfeiture have been commenced."

"567.8 ALIENS' INHERITANCES. 1. The right of aliens not residing within the United States or its territories to take real property in this state by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take real property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents and the right of aliens not residing in the United States or its territories to take personal property in this state by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take personal property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents.

"2. The burden shall be upon such nonresident aliens to establish the fact of existence of the reciprocal right set forth in subsection 1.

"3. If such reciprocal rights are not found to exist and if no heirs other than such aliens are found eligible to take such property, the property shall be disposed of as escheated property."